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# In the Supreme Court of the United States

OCTOBER TERM, 1959

**No. 200**

In the Matter of the Estate of
JANET M. PECK,
*Deceased,*

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GLORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FEINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
*Petitioners,*

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
*Respondent.*

On Petition for Writs of Certiorari to the Supreme Court of the State of California to the District Court of Appeal, First Appellate District, and to the Superior Court in and for the City and County of San Francisco

## Brief for Respondent in Opposition

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## Brief for Respondent in Opposition

### OPINION BELOW

The opinion of the District Court of Appeal of the State of California, First Appellate District, Division Two is reported at 168 Adv. Cal. App. 28, 335 P.2d 185. The opinion is printed in the Appendix to the petition herein.

## JURISDICTION

Petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C. 1257(3).

## STATUTE INVOLVED

Section 1257(3) of the Judicial Code (28 U.S.C. 1257(3)) provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of * * * the United States."

## QUESTIONS PRESENTED

The court below construed the will of Janet Peck and held that the purposes of the trust provided for in the will were intended by the testatrix to be exclusively charitable and that the trust was a valid charitable trust. Only two questions are presented by the arguments of petitioners.

1. Does the determination of the validity of a trust created by a will present a federal question so that the judgment of the state court is reviewable by this Court?

2. Will this Court review unsupported allegations of irregularities by the state court in litigation relating to the construction of a will?

## STATEMENT

This case involves the validity of a testamentary trust. Janet Peck by her will left her entire estate to The Trustees of The Leland Stanford Junior University, in trust, for certain educational purposes.

Petitioners, who are children of deceased persons who were first cousins of the testatrix,* filed a petition for preliminary distribution and for determination of heirship claiming that the trust provided in the will had non-charitable purposes, was therefore invalid as a perpetuity, that an intestacy resulted and that they were entitled to distribution of the estate. The executor filed a petition for preliminary distribution of a portion of the estate to the Stanford Trustees upon the trusts set forth in the will.

After a full hearing, the Superior Court construed the will and found that the testatrix intended that her entire estate be used exclusively for charitable purposes and concluded that a valid charitable trust was created. The court distributed to the respondent the portion of the estate which was the subject of the executor's petition, in trust, for the educational purposes provided in the will.

By its decision herein the District Court of Appeal affirmed the decree below. As stated in the petition, "The Justices had the benefit of a full presentation in the briefs and on oral argument" (Pet. 21). Prior to the oral argument

*Although the point is immaterial in this proceeding, respondent cannot agree with petitioners' contention that they are the legal heirs of the testatrix (Pet. 28). In view of the conclusion of the state court that the trust was valid, the state court did not find it necessary to determine who would be entitled to receive the entire estate if the trust were held invalid. Edmund More, Jr. was the closest surviving relative of the testatrix at the date of her death (Opinion, Pet. App. ii), and he, rather than the petitioners, is the person who would be entitled to take any intestate property. California Probate Code, Sec. 226. As pointed out in respondent's brief filed with the District Court of Appeal (R. Item 4, pp. 35-38), there is no merit in petitioners' claim that the interest of Mr. More was transferred to them. The instrument prepared by petitioner Aaron M. Sargent under which he claims an assignment to him of one-half of Mr. More's interest was not and did not purport to be a present assignment (R. Item 2, Cl. Tr. 18-20). The instrument of relinquishment relied on by petitioners was not signed by Mr. More but was prepared and executed by Mr. Sargent as the purported attorney for Mr. More some twenty days after Mr. More had revoked and rescinded the power of attorney he had given to Mr. Sargent (R. Item 2, Cl. Tr. 27; Stanf. Ex. A).

petitioner Aaron M. Sargent attempted to disqualify one of the Justices of the District Court of Appeal alleging bias and prejudice on the part of the Justice against Mr. Sargent and alleging that the Justice was prejudiced in favor of "communists and communistic activity" (R. Item 7). The matter of the claimed disqualification was heard in accordance with the applicable statute (Calif. Code of Civil Procedure, Sec. 170) by the Presiding Justice of the Third District Court of Appeal who found that the alleged existing bias and prejudice did not exist and who held that the Justice was fully qualified to sit and act (R. Item 12).

The question presented to the District Court of Appeal was whether the perpetual trust created by the will was valid under California law. That question turned upon the construction of the will itself and the application of state law thereto. In upholding the validity of the trust as a trust exclusively for charitable purposes the court stated that there was no merit in the petitioners' position. Two justices* of the District Court of Appeal concurred in the judgment as required by state law (California Constitution, Art. VI, Sec. 4a).

A petition for rehearing was denied by the District Court of Appeal and the Supreme Court of the State of California denied a petition for hearing in that court, Justice Spence not participating.†

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*The justice who sought to be disqualified did not sign the opinion.

†Rule 28(c) of Rules on Appeal adopted by the Judicial Council of the State of California provides, in part, as follows: "A hearing in the Supreme Court after decision in the District Court of Appeal, may be granted by an order, signed by at least 4 justices assenting thereto, and filed with the clerk. The denial of a hearing may be evidenced by an order signed by the Chief Justice and filed with the clerk." Mr. Justice Spence, one of the seven justices of the California Supreme Court, is a trustee of Stanford University, and therefore did not participate in the consideration of the petition for hearing in that court. No justice of the California Supreme Court voted for a hearing. (Pet. Sep. App. 42)

## ARGUMENT

This case presents a simple issue of the construction of the will of Janet Peck by which she left her estate to The Trustees of The Leland Stanford Junior University under a trust for described educational purposes. The trial court and the District Court of Appeal through application of principles of law long established in the California courts found the trust purposes to be exclusively charitable and accordingly upheld the validity of the trust and the distribution of the estate in accordance with the wishes declared in Miss Peck's will. All contentions of the petitioners on the merits were fully presented to the District Court of Appeal and again to the California Supreme Court in a petition for hearing in that court.

The construction of a will and the validity of a charitable bequest are matters of state law, and the judgment of the District Court of Appeal interpreting this will presented no federal question whatsoever. The decision construing the will is manifestly correct, but even if it were erroneous there is no federal question requiring decision by this Court.

Having consistently lost in the state courts petitioners now seek to obtain a further review by the assertion of totally groundless charges against the judges of the state appellate courts. The irresponsible conduct of petitioners cannot create federal constitutional questions where none exist.

### I.

### The Construction of the Will Presents No Federal Question.

The state court has not decided any federal question, however insubstantial. The construction of a will is solely a matter of the local law of the domicile. 4 Page on Wills, p. 587. It seems almost too obvious for argument that a determination of the intentions of a particular testatrix and

of the extent to which the state will permit those intentions to be carried out must be made upon the basis of the facts and of the law of the state of domicile.

Under the law of the State of California, the purposes of the trust created by the testatrix were to be ascertained from the testatrix's intention as expressed in the will. The District Court of Appeal considered the relevant language of the will, determined the purposes for which the testatrix intended the trust property to be used, concluded that "the will restricts the use of trust property solely to charitable purposes" (Opinion, Pet. App. vi) and held that the trust was a valid charitable trust under the law of California. This decision of the state court therefore presented no federal question whatsoever. It was based solely on a proper application of state law.

The resolution of a controversy of this nature is in no way dependent upon the Constitution of the United States, its treaties or its statutes and all of the issues must be decided upon the basis of the applicable state laws. There is therefore no function of review for this Court to perform. This Court has long recognized this principle, and it is signficant that petitioners have not cited a single case in which this Court has granted certiorari to review a judgment construing a will pursuant to the provisions of Section 1257(3) of the Judicial Code.

## II.

### The Decision of the State Court on Questions of State Law Does Not Constitute a Denial of Due Process Nor of Equal Protection of the Laws Even if the Decision Were Erroneous.

Petitioners' contention that they have been denied due process and equal protection of the laws is in substance only an argument that the case should have been decided in

their favor by the state courts. Petitioners had a full hearing in two state courts wherein they unsuccessfully urged the adoption of the construction which they seek to have placed on the words of the will. Petitioners' arguments were also fully presented to the State Supreme Court in a petition for hearing which was denied. The decision of the state court is demonstrably correct, but even if it were erroneous, this Court would have no jurisdiction to review the decision, for it has long been established that an erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law. *Nebletter v. Carpenter*, 305 U.S. 297 (1938); *Sexton v. Barry*, 233 F.2d 220, 224 (6 Cir. 1956), cert. den. 352 U.S. 870 (1956).

As stated by this Court in *American Railway Express Co. v. Kentucky*, 273 U.S. 269, 272, 273 (1927):

> "Save in exceptional circumstances not now present we must accept as controlling the decision of the state courts upon questions of local law, both statutory and common. 'The due process clause does not take up the laws of the several States and make all questions pertaining to them constitutional questions, nor does it enable this court to revise the decisions of the state courts upon questions of state law.' *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.*, 243 U.S. 157, 165, 166.
>
> * * * * * * *
>
> "We cannot interfere unless the judgment amounts to mere arbitrary or capricious exercise of power or is in clear conflict with those fundamental 'principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.'"

The record in this case reflects a complete, full and fair hearing and there is nothing therein to support a charge that the state court judgment amounts to mere arbitrary or

capricious exercise of power or is in conflict with fundamental principles of jurisprudence.

III.

**The Allegations of Judicial Misconduct or Irregularity Are a Mere Sham and Afford No Basis for Jurisdiction in This Court.**

The irresponsible charges made by the petitioners that the California District Court of Appeal has rendered a "fraudulent opinion" containing "deliberately false statements of fact and law" and "half-truths" and that the court has "suppressed material facts" are made without any basis whatsoever either in or outside the record.

These charges are but a repetition of the unprofessional and improper conduct which has characterized petitioners' presentation in this case. Petitioners directed similar arguments to the California Supreme Court in their efforts to obtain a reversal of the decision of the District Court of Appeal and even attempted, unsuccessfully, to bring before the California Supreme Court as "Additional Evidence" in this case the record of certain cases involving bribery, collusion and fraud on the part of the judiciary. The record herein contains not the slightest shred of evidence of any judicial misconduct and these charges are in reality nothing more than a contention in the most disrespectful and improper terms that the California courts have misinterpreted the will and have rendered a decision that conflicts with prior decisions of the California courts.

It is obvious that this intemperate and groundless attack upon the state court is an attempt born of desperation to present a constitutional question in order to obtain a review in this Court of questions of state law that otherwise could not be brought before this Court. Such a transparent pretext should not be allowed to succeed. *United Society Company v. American Fruit Product Company*, 238 U.S. 140 (1915); *Goodrich v. Ferris*, 214 U.S. 71 (1909).

Petitioners' dissatisfaction with the decision of the state court does not justify or excuse their conduct nor does it add substance to the assertion of a due process issue. Any allegation of a constitutional issue in this case is clearly devoid of merit and frivolous.

## IV.

### Petitioners State No Adequate Reasons for Allowing a Writ of Certiorari.

Petitioners list seven so-called "Points" as reasons for granting certiorari (Pet. 23-28) but these are totally without merit. For the most part these "reasons" amount to nothing more than baseless aspersions upon the state court and charges that the court has misconstrued the will. We have shown in Section II of this brief that even if the construction of the will adopted by the state court were erroneous, the decision did not deprive the petitioners of any constitutional rights.

We desire to comment further on two of the "reasons" urged by Petitioners.

In Point 3 it is contended that the state courts "resorted to a general presumption in favor of Respondent as an alleged charity"* and that this constituted "a denial of both due process and equal protection".

*This charge apparently arises from the following statements in the opinion of the District Court of Appeal:

> "We start with several fundamental principles of the law. * * * Second, courts look with favor upon all attempted charitable bequests and there is no authority to construe a charitable bequest as legally void if it can possibly be made good. It is the policy of the law to favor gifts for charitable purposes and a will providing such gifts will be liberally construed to accomplish the intent of the donor. (*Estate of Quinn*, 156 Cal. App. 2d 684 (320 P.2d 219); *Estate of Tarrant*, 38 Cal. 2d 42 (237 P.2d 505, 28 A.L.R. 2d 419); *Estate of Bunn*, 33 Cal. 2d 897 (206 P.2d 635); *Collier v. Lindley*, 203 Cal. 641 (266 P.526); *Estate of Hinckley*, 58 Cal. 457.)" (Pet. App. iv

The statement in the opinion which the petitioners criticize is merely an ordinary and widely observed rule of constructional preference. To whatever extent the rule is applicable, it is a rule in favor of the attempted charitable bequest, not, as petitioners claim, in favor of respondent who happened to be named as trustee. If the will were ambiguous as to the nature of the trust purposes, the rule would have been applicable whether the designated trustee was a bank, an individual, or, as in the present case, the governing body of an educational institution.

Respondent contended before the District Court of Appeal that the only reasonable construction to be given the words of the will was that the testatrix intended that the trust property be used exclusively for charitable purposes, but that if there were any ambiguity as to whether the purposes of the trust were exclusively charitable, that ambiguity should be resolved in favor of the charitable bequest (R. Item 4, pp. 19-20).

It is readily apparent from the opinion that the state court found no ambiguity in the trust provisions of the will and therefore no necessity to resort to the above mentioned rule. The court stated that "any reasonable construction of the language used by the testatrix indicates that the testatrix desired to contribute toward world peace by providing education for newspapermen" (Opinion, Pet. App. iv) and that "In the instant case, the will restricts the use of trust property solely to charitable purposes" (Opinion, Pet. App. vi).

Moreover, this rule of constructional preference is in accordance with principles laid down by this Court. In *Russell v. Allen*, 107 U.S. 163, 167 (1882) this Court stated with reference to trusts for charitable purposes that

> "* * * the instruments creating them should be so construed as to give them effect if possible * * *"

Petitioners' contention that the state court's reference to this rule of construction constitutes a denial of due process and of equal protection of the laws is wholly untenable and raises no constitutional issue reviewable by this Court.

The charge in Point 4 that the decision of the state court amounts to an exercise of legislative power is likewise unfounded. The state court exercising its judicial power interpreted the will under state law as one creating a trust exclusively for charitable purposes. As such the trust was valid under state law notwithstanding that it was to have perpetual existence. California Constitution, Article XX, Sec. 9; *Estate of Hinckley*, 58 Cal. 457, 473 (1881). Petitioners' allegation that the state court exercised legislative power is not supported by the facts of this case.

Notwithstanding petitioners' contention to the contrary, it is obvious from the opinion of the District Court of Appeal that the decision of the state court is based upon a thoughtful consideration of the provisions of the will and upon principles of law applicable to charitable trusts well established in the California courts. The decision below turned upon the construction to be accorded to the words of a particular will. That decision established no novel or important principle of law and no question of great public interest was at stake. In upholding the validity of the testamentary trust as a trust for charitable purposes, the state court adopted the only reasonable construction that could be given to the provisions of the will. We submit that petitioners have not stated any adequate reason for a further review in this Court.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for writs of certiorari should be denied.

Dated: August 3, 1959.

Respectfully submitted,

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